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No. 93-345

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1993

ERIC H. SCHEFFEY, PETITIONER

v.

RESOLUTION TRUST CORPORATION, RECEIVER FOR HERITAGE FEDERAL SAVINGS & LOAN ASSOCIATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the bankruptcy court consolidated two separate claims of the Resolution Trust Corporation into a single claim.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-24) is reported at 995 F.2d 490. The opinion of the district court (Pet. App. 25-46) and the orders of the bankruptcy court (Pet. App. 47-51, 52-54, 55-68) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 1, 1993. The petition for a writ of certiorari was filed on August 30, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1986, Heritage Federal Savings and Loan Association lent $4,900,000 to Midway Partners to finance acquisition of certain real property referred to as "The Cape." Midway's obligation to repay the loan was secured by a lien on The Cape. In 1987, Heritage extended a second loan to Midway for an additional $400,000, secured by a second lien on The Cape; petitioner also guaranteed repayment of the second loan. See Pet. App. 4, 7 n.2.

2. In 1988, Midway sought relief under Chapter 11 of the Bankruptcy Code. The RTC[1] filed two proofs of claim: one for $4,408,452.19 (the amount due on the first loan as of the date of the bankruptcy petition), and the other for $399,156.56 (the amount due on the second loan as of the date of the bankruptcy petition). See Pet. App. 4-5, 26-27.

a. In 1990, the bankruptcy court held a hearing to consider motions to deny confirmation of a plan of reorganization proposed by Midway, to lift the automatic stay to permit the RTC to foreclose on its liens, and to convert the case to a liquidation proceeding under Chapter 7 of the Bankruptcy Code. At the hearing, the court orally concluded that the collateral was worth $4,815,000. See Pet. App. 5-6, 28. Because that sum was equal to the amount outstanding on the first lien at the time of the hearing,[2] the court explained that the RTC's claim based

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[1] In this brief, the term "RTC" refers to the Resolution Trust Corporation acting in its capacity as receiver for Heritage, as opposed to acting in its corporate capacity.

[2] Under 11 U.S.C. 506(b), interest continued to accrue on the first lien claim during bankruptcy to the extent the value of the collateral exceeded the amount of the claim. Once interest had accrued in an amount sufficient to cause the total claim to equal the value of the collateral, interest stopped accruing. See *Rake* v.

on the first lien would be fully secured, and that the RTC's claim based on the second lien would be entirely unsecured.[3] C.A. App. 218, 220, 319-321.

On May 3, 1990, the court issued a written order denying confirmation of the plan, lifting the automatic stay, and converting the case to Chapter 7. Pet. App. 55-68. In setting out the factual background, the order indicated, somewhat in contrast to what the court had stated orally at the hearing, that "[f]or purposes of this opinion, the court shall refer to both [of the RTC's] claims as one claim secured by a first lien on the project." *Id.* at 57 n.1. Later in the order, in the course of discussing which parties would be entitled to vote as unsecured creditors, the court stated that the RTC "has no unsecured claim." *Id.* at 64. In a footnote, the court stated that interest on the RTC's "claim ($4,408,452.19 plus $399,156.56) * * * continued to accrue * * * until the amount of principal and interest equalled the value of the collateral ($4,815,000). At that point interest no longer accrued and [the RTC] had a secured claim of $4,815,000 and no unsecured claim." *Id.* at 64 n.4.[4] The court noted, however,

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Wade, 113 S. Ct. 2187, 2190 (1993). Hence, the end result would be a secured claim equal to the entire value of the collateral.

[3] Because the claim based on the second loan was unsecured, interest would not accrue after the date the petition was filed. 11 U.S.C. 502(b)(2) (general rule barring claims in bankruptcy for unmatured interest), 506(b) (permitting claims for interest on oversecured claims).

[4] If the claims had been consolidated and treated as a single claim, their face amount at the date the bankruptcy petition was filed would have been less than the value of the collateral. Accordingly, interest would have accrued on the claim under 11 U.S.C. 506(b) until the entire claim equalled the value of the collateral; there would have been no remaining unsecured claim. Although that consolidated treatment would have caused the RTC to have the same secured claim as would the separate treatment discussed at the hearing ($4,815,000), it was less favorable to the RTC as a

that "[w]hether or not [the RTC] has an unsecured claim * * * is not significant because [another unsecured creditor] has voted to reject the plan and that vote by itself denies the debtor acceptance of the unsecured class." *Ibid.* Because the RTC prevailed on all of the contested matters at issue in the order, the RTC did not appeal.

b. When the RTC subsequently sued petitioner in state court attempting to collect on his guaranty of the second loan to Midway, petitioner argued that the bankruptcy court's May 1990 order reflected a ruling that the RTC did not have a claim against petitioner on the guaranty. The RTC then asked the bankruptcy court to modify the language in the footnote of its May 1990 order to clarify that the two loans in fact constituted separate claims, and thus that the RTC continued to hold an unsecured claim for the balance of the second loan. See Pet. App. 7-8, 29. On January 2, 1991, the bankruptcy court denied the RTC's motion seeking modification of the language of the May 1990 order. *Id.* at 52-54. The court explained that "the requested change has no effect on the relief granted in the order of May 3[, 1990] and the change would have no effect on the estate." *Id.* at 53. The court also stated that it was "not convinced that a mistake was made." *Id.* at 54.

c. When the RTC foreclosed its first lien on The Cape, it purchased the property for $3,180,250. The RTC then filed two unsecured claims in the bankruptcy court, one for $1,242,474.17 (the amount outstanding on the first loan after deduction of the proceeds of the foreclosure sale), and another for $399,156.56 (the entire amount of

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whole because it deprived the RTC of the separate unsecured claim that it would have based on the second loan if the claims were treated separately. Because petitioner guaranteed the second loan personally (see Pet. App. 7 n.2), the continued existence of that unsecured claim has financial significance to the RTC.

the second loan). The trustee in bankruptcy argued that the RTC had no unsecured claim on the theory that the bankruptcy court already had determined in its May 1990 order that the property had a value of $4,815,000 and that the RTC's claims were limited to a total of $4,815,000. See Pet. App. 8-9, 28, 30. After a hearing, the court issued an order accepting the trustee's arguments. *Id.* at 47-51. The court started from the premise that it had made a "prior determination that [the RTC] had two fully secured claims," apparently referring to the footnote in the May 1990 order. *Id.* at 49. Accordingly, it reasoned that unless the value of the collateral had declined since the time of the 1990 hearing, the RTC could not have an unsecured claim. On the valuation point, the court explained that it was "not persuaded that the value of the property was less than $4,815,000 at the time of the foreclosure." *Id.* at 50-51. Hence, the court rejected the RTC's unsecured claims. *Id.* at 51.

3. On appeal, the district court affirmed. Pet. App. 25-46. The court first stated that the January 1991 order finally resolved the issue of whether the RTC's two claims should be treated as a single claim (in which event the RTC had no unsecured claim) or as two claims (in which event the second claim was a separate and continuing unsecured claim). Because the RTC failed to appeal within ten days of that order (which treated its claims as a single claim), the court ruled that it could not consider the RTC's challenge to that treatment of the claims. *Id.* at 34-35.

4. The court of appeals reversed in relevant part. Pet. App. 1-24. The court first rejected petitioner's argument that the RTC's arguments about the treatment of its claims were barred by its failure to appeal from the May 1990 and January 1991 orders of the bankruptcy court. *Id.* at 11-13. The court stated that its "reading of the bankruptcy court's May 3, 1990 order leads us to

conclude that the statements concerning the status of the RTC's liens in that order * * * are dicta." *Id.* at 11. In particular, the court noted, the order itself stated that its treatment of the two claims as a single claim was only "[f]or purposes of this opinion." *Id.* at 12 (quoting *id.* at 57 n.1). The court of appeals also pointed out that the bankruptcy court expressly had stated t' at the status of the RTC's claims "neither factored into [the court's 1990] decision nor had any effect on the relief granted in the [1990] order." *Id.* at 12 (footnote omitted). The court of appeals then stated that "[b]ecause neither statement * * * was relevant to the bankruptcy court's resolution of the issues before it, the RTC did not waive any right to appeal." *Ibid.* Finally, the court concluded that "the bankruptcy court did not 'consolidate' the RTC's two liens, and we may proceed to review the bankruptcy court's denial of the RTC's two unsecured claims." *Id.* at 13. On that point, the court of appeals accepted the RTC's argument that it had an unsecured claim for the amount outstanding on the second loan. *Id.* at 22-23.[5]

ARGUMENT

1. Petitioner's principal argument (Pet. 27-33, 35-37, 43-47) is that the court of appeals erred in allowing the RTC to pursue an untimely challenge to what petitioner portrays as the bankruptcy court's decision to consolidate the RTC's claims. But that argument rests on the premise that the bankruptcy court's May 1990 order (or the January 1991 order declining to modify the May 1990 order) in fact consolidated those claims. Accordingly, petitioner's argument rests on the contention that the court of appeals erred in concluding that the bankruptcy court did not in fact consolidate the RTC's two claims.

[5] The petition does not challenge that determination.

Petitioner's assertion (Pet. 37-42) that the court of appeals erred on that point in substance asks this Court to review the court of appeals' determination of the meaning of a particular order of the bankruptcy court; that is not a question warranting review by this Court. In any event, for the reasons stated by the court of appeals (Pet. App. 11-13), petitioner's argument that the May 1990 and January 1991 orders actually consolidated the claims is incorrect.

2. Petitioner also asserts (Pet. 33-34) that the court of appeals erroneously held that a court cannot change a decision between the time it issues an oral announcement of decision and the time it dockets the decision. The court of appeals, however, held nothing of the sort. Rather, the court of appeals concluded that the language of the docketed written opinion did not reflect a determination by the district court that the RTC's claims should be consolidated. Pet. App. 11-13. As explained above, that conclusion does not present a question warranting review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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